

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

| | | |
|--------------------------------|---|---------------------------|
| ARTHUR BRENNAN MALLOY, |) | |
| # 101 329, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CASE NO. 2:18-CV-1067-WHA |
| |) | [WO] |
| COUNTY OF MONTGOMERY, ALABAMA, |) | |
| <i>et al</i> , |) | |
| |) | |
| Defendants. |) | |

ORDER

This case is before the court on the Recommendation of the Magistrate Judge (Doc. 3), and Plaintiff Arthur Malloy's Objection thereto (Doc. 4). Upon a *de novo* review of the Recommendation, the Objection to the Recommendation, and the file in this case, the court finds the Objection to be without merit and due to be overruled.

Malloy is an inmate incarcerated at the Donaldson Correctional Facility who files this 42 U.S.C. § 1983 action challenging the constitutionality of actions taken by the state courts in denying his request for a modification of sentence under Ala. Code. § 13A-5-9.1 in November of 2003 and March of 2007. In his Recommendation, the Magistrate Judge recommended Malloy's complaint be dismissed under 28 U.S.C. § 1915(g) which directs that a prisoner is not allowed to bring a civil action or proceed on appeal *in forma pauperis* if he "has, on 3 or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." The Magistrate Judge determined that Malloy, while incarcerated or detained, has on at

least five occasions had civil actions and an appeal dismissed as frivolous or failure to state a claim. Malloy objects to the court's determination that he is in violation of § 1915(g) claiming the cases on which the court relies to find him in violation of the "three strikes rule" do not qualify as strikes.

This court agrees that the record of the proceedings on which the determination was made to find Malloy in violation of 28 U.S.C. § 1915(g) supports the findings and conclusions made in the Recommendation of the Magistrate Judge. Accordingly, it is hereby ORDERED as follows:

1. Plaintiff's Objection (Doc. 4) is OVERRULED.
2. The Recommendation of the Magistrate Judge (Doc. 3) is ADOPTED.
3. The motion to proceed *in forma pauperis* (Doc. 2) is DENIED.
4. This § 1983 complaint is DISMISSED without prejudice for Plaintiff's failure to pay the full filing fee upon the initiation of this case.

A Final Judgment will be entered.

DONE, this 30th day of January 2019.

/s/ W. Harold Albritton
W. HAROLD ALBRITTON
SENIOR UNITED STATES DISTRICT JUDGE